IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1945

No. 749

PEOPLE OF THE STATE OF ILLINOIS ex rel.
ROBERT E. GORDON, Director of Labor,
Petitioner

vs.

UNITED STATES OF AMERICA,
Respondent

REPLY BRIEF FOR PETITIONER

GEORGE F. BARRETT,
Attorney General of the State of Illinois,
209 South LaSalle St., Chicago 4, Ill.
Attorneys for Petitioner

ALBERT E. HALLETT,
Assistant Attorney General,
Of Counsel.

HAMILTON BRIEF COMPANY, CHICAGO 160

INDEX.

Citations.	Page
Cases:	
Cook County National Bank v. United States, 107 U. S. 445	4
Ever Krisp Food Products Co., In re, 307 Mich 182	6, 7
Lerman v. Lincoln Novelty Co., 130 N. J. Eq. 144	6, 7
Mellon v. Michigan Trust Co., 271 U. S. 236	4
Rivard v. Bijou Furniture Co., 67 R. I. 251, 21 Atl. (2d) 563, 68 R. I. 358, 27 Atl. (2d) 853	8
White Plains Oil Corp. In the matter of 287 N. Y. 141	6
United States v. Emory, 314 U. S. 423	6
United States v. Guaranty Trust Co. of New York, 280 U. S. 478	4
United States v. Marxen, 307 U. S. 200	4
United States v. Waddill Co., 323 U. S. 353	6, 7
Statutes:	
Section 3466, Revised Statutes (31 U. S. C. 191)	1, 2, 3, 4, 5, 6, 7, 8
Social Security Act, Titles VIII and IX, and Sections 807(c) and 905(c)	2, 3, 7

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1945

No. 749

PEOPLE OF THE STATE OF ILLINOIS, ex rel.
ROBERT L. GORDON, Director of Labor,
Petitioner;

vs.

UNITED STATES OF AMERICA,
Respondent.

REPLY BRIEF FOR PETITIONER.

I.

Since respondent's argument under Point I seems to be based in large measure upon an erroneous conception of the extent and nature of our contention under Point I, we desire, at the very outset of this reply, to make clear exactly what we do and do not contend under this issue.

We do *not*, as respondent erroneously states, contend that the United States is not entitled to priority for "Social Security" taxes because

> "such taxes were not intended by Congress to be included within the scope of Section 3466."

Nor do we, as respondent seems to assume, contend that Federal taxes under Titles VIII and IX of the Social Security Act and Federal capital stock taxes are not debts due the United States within the scope of Section 3466.

What we *do* contend is that the Congress by the enactment of the Social Security Act and related legislation has manifested an intention that the priority of the United States under Section 3466 *shall not apply as against claims of the States for unemployment compensation contributions* exacted under State statutes adopted in accordance with the congressional policy evinced in the Federal statute.

Consequently we also concede respondent argument that such taxes are, under Section 3466, entitled to priority over the claims of all private persons and of the State and local government for all taxes *other* than those arising under unemployment compensation acts (provided, of course, that the debtor is insolvent within the meaning of Section 3466 and that such claims are not secured).

Nor do we contend, as respondent infers, that the State's claim for unemployment compensation contributions is, by virtue of the provisions of the Social Security Act and related legislation, somehow transformed into a Federal claim and therefore entitled to the priority accorded the United States under Section 3466. As we have said, our argument is limited to the narrow contention that, *as against a State's claim for unemployment compensation contributions and that type of claim only*, Section 3466 is not applicable to give the United States priority.

Thus, most of respondent's argument under Point I, which sets up a "straw man" and then proceeds to knock him down, is irrelevant and not responsive to the narrower issue here presented.

In answer to our contention that Congress by enacting the Social Security Act and related legislation has manifested an intention that the priority of the United States under Section 3466 shall not apply as against claims by the States for unemployment compensation contributions, respondent points out that Section 807(c) of the Social Security Act with respect to Title VIII taxes, provides that:

> "All provisions of law, including penalties, applicable with respect to any tax imposed by section 600 or section 800 of the Revenue Act of 1926, and the provisions of Section 607 of the Revenue Act of 1934, shall, *insofar as applicable and not inconsistent with the provisions of this title*, be applicable with respect to the taxes imposed by this title." (Italics added.)

Respondent also points out that a similar provision is contained in Section 905(c) of the Social Security Act with respect to Title IX taxes.

From these provisions, respondent concludes that:

> "instead of repudiating Section 3466, Congress took pains to show that the United States could invoke the section as a means of securing collection from an insolvent taxpayer of the taxes imposed by the Social Security act."

This conclusion does not follow at all. In the limitations which we have set forth in italics, viz.:

> "insofar as applicable and not inconsistent with the provisions of this title,"

Congress has specifically indicated that it realized that such provisions as Section 3466 might jeopardize the collection of contributions by the States and therefore intended to restrict the collection procedures available to the United States to such procedures as would not be

> "inconsistent with the provisions of this title."

It is also material that Congress did not expressly indicate that Section 3466 was to be available.

In this connection, it should be remembered that we are not contending that Section 3466 is not available to the United States as against claims generally, but limit our contention to the narrow proposition that Congress has manifested an intention that *as against claims of the States for unemployment compensation contributions*, this section was not to be available and that such an application of Section 3466 would, in the words of the above section, be

"inconsistent with the provisions of such title."

Respondent also reviews in considerable detail the facts and holdings of this Court in *Cook County National Bank* v. *United States*, 107 U. S. 445; *Mellon* v. *Michigan Trust Co.*, 271 U. S. 236; *United States* v. *Guaranty Trust Co.*, 280 U. S. 478; and *United States* v. *Maxwell*, 307 U. S. 200. Despite respondent's remarks to the effect that each of those cases turned on the particular provisions of the statutes involved, respondent does not seriously challenge our contention (Br. 10, 11) that these cases show that this Court has repeatedly and consistently held that it will not apply the provisions of Section 3466 where the concept of Federal priority is inconsistent with the intent of Congress, as manifested in a subsequent Federal statute, and that this is so even where such later statute does not in express terms waive such priority but leaves such intention to be derived from the general provisions and purposes of such statute.

Respondent also correctly points out that the State's argument that Section 3466 is inapplicable only against a certain class of creditors, viz.: The States (and then only for unemployment compensation contributions) impliedly recognizes that Section 3466 is applicable against all other

creditors, and points out that none of the cases cited by us involve such a situation.

That is true, but, as we see it, there is nothing inherently difficult about such a result. To have a priority against certain classes of creditors but not against others is neither unusual nor unworkable. In cases of bankruptcy, the United States shares *pro rata* with claims of the states and both have priority over other classes of claims. Nor is it more complicated than where a second class claim in bankruptcy takes priority over third and fourth class claims but not over first class claims.

The only substantial question involved in Point I is, as we state in our original brief (Br. 12), whether in and by the enactment of the Social Security Act and related legislation the Congress has manifested an intention that, *as against claims of the States for unemployment compensation taxes* exacted under State statutes adopted in accordance with the congressional policy evinced in such acts, Section 3466 was not to be applied because inconsistent with the general provisions, scope and purposes of the Social Security Act.

Respondent devotes little of its argument to the intention of Congress in that regard. As we see it, respondent does not seriously challenge our conclusions that the Congress attached *first* and *paramount consideration* to the accumulation by the States of those funds from which the unemployed of the nation were to receive benefits and thereby diminish the drain upon the Federal treasury, and considered the accumulation of the Federal funds only secondary, or, at best, on no more than on a parity; and that therefore it was inconceivable that Congress intended the collection of such contributions to be impaired or jeopardized by the invocation of Section 3466.

After all, the Federal government not only induced the States to establish such funds by giving a 90 per cent credit against the Federal tax for payments made to the States, but it finances their administration, constantly supervises their legislation and administrative procedures, has frequently waived 90 per cent of its share in order to aid the States collect such moneys, holds the States' unemployment trust funds in its own (Federal) treasury, and has recently itself guaranteed the solvency of such State funds.

What consistency would there be in impairing the solvency of such funds by the invocation of Section 3466 against the claims of the States and then to have to furnish Federal government funds in order to restore the solvency of these same funds which it had itself depleted by the invocation of Section 3466?

Respondent cites certain language from *United States* v. *Emory*, 314 U. S. 423, where this court, in holding that the National Housing Act did not show an implied intention to waive the priority of Section 3466, pointed out that that act was not intended to strengthen the *general* credit of the property owners. It should be noted that in the case at bar the Congress has even gone so far as to pledge the government's own credit to guarantee the solvency of the State unemployment trust funds, which it holds in the Federal treasury as a trust fund.

In support of its contentions, respondent cites *three* State court decisions: *Matter of White Plains Oil Corp.*, 287 N. Y. 141; *In re Ever Krisp Food Products Co.*, 307 Mich. 182; and *Lerman* v. *Lincoln Novelty Co.*, 130 N. J. Eq. 144; and the ruling of this Court in *United States* v. *Waddill Co.*, 323 U. S. 353 (Resp. Br. 7, 20-22).

In the *Matter of White Plains Oil Corp.*, *supra*, the State conceded that the United States was entitled to full

priority for such of its claim as related to Title VIII taxes and also conceded that the government was entitled to priority under Section 3466 for Title IX taxes. The only contention presented to the court relates to whether the full amount of the tax or only 10 per cent thereof was due the Federal government. Thus, the decision does not bear upon the issue presented in the case at bar.

In *Ever Krisp Food Products Co., supra,* while the State apparently did contend that Section 3466 was not applicable "in view of the congressional intent expressed in the Social Security Act" (p. 195), the Court did not discuss this contention in any way but was content to rest its decision on the ground that the State did not have a prior specific and perfected lien. Thus, that decision is not pertinent to the narrow issue here presented.

In *Lerman* v. *Lincoln Novelty Co., supra,* while the Court did hold that the United States under Section 3466 had priority over all other claimants, including a claim of the State for unemployment compensation contributions, there is not only no intimation that the State disputed the applicability of Section 3466 as against its claim, but no indication that the State even appeared in the case, the contest being only between the landlord claiming a lien, and the United States. Thus the holding of the Court has no bearing on the issue presented in this case.

In *United States* v. *Waddill, supra,* it was conceded by the State that its claim for unemployment compensation contributions was subordinate to the claims of the United States, and therefore this Court's decision, which was merely that the landlord's claim for rent was subordinate to the claims of the United States because his lien was neither specific nor perfected, is in no way pertinent to the issue here.

So far as we know, there are only *two* cases which have passed upon this issue, the case at bar (as presented in Cases 749 and 750) and the case of *Rivard* v. *Bijou Furniture Company*, 67 R. I. 251, modified in 68 R. I. 358, which supports our contentions. We submit that it applies the correct rule, which should be adopted by this Court.

II.

Since the United States predicates its answer to our second contention entirely upon the assumption that it is entitled to priority over the State's claim by virtue of Section 3466, it appears that it is willing to concede, if it be held that as against the State's claim for unemployment compensation contributions Section 3466 is not applicable, that the claim of the State of Illinois is secured (although not perfected) and as such is entitled to priority over the unsecured claim of the United States.

Respondent's remarks to the effect that the priority of the United States for capital stock taxes is not affected by the State's argument with respect to the applicability of Section 3466 to Social Security taxes, are not correct. This erroneously assumes that we contend that the government's claims for Social Security taxes are not debts due the United States within the meaning of Section 3466. As we have said under Point I of this reply, we concede that these taxes (and the capital stock taxes) are debts within the meaning of that section but contend that Congress intended that this section was not to be applied as against the claim of a State for unemployment compensation contributions and thus to impair or jeopardize the States' collection of such funds, the collection and distribution of which to unemployed persons constitutes the very heart of the Social Security program. Obviously this latter argu-

ment applies as well to capital stock taxes as to Federal claims for taxes under Titles VIII and IX of the Social Security Act.

CONCLUSION.

In view of the foregoing, we submit that the decision of the Supreme Court of Illinois is erroneous and should be reversed by this Court.

Respectfully submitted,

GEORGE F. BARRETT,
Attorney General of the State of Illinois,
Attorney for Petitioner.

ALBERT E. HALLETT,
Assistant Attorney General,
Of Counsel.

MICROCARD
TRADE MARK ®
22
45
844 2
MATTHEW BENDER & COMPANY
MB
3-63
microcard